IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

THURSDAY, THE 16TH AUGUST 2007 / 25TH SRAVANA 1929

MFA.No. 449 of 2003()

IC.29/2000 of EMPLOYEES INSURANCE COURT, ALAPPUZHA
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APPELLANT: RESPONDENT

THE REGIONAL DIRECTOR,
E S I CORPORATION,
SWARAJ ROUND NORTH, THRISSUR.

BY ADV. SMT.T.D.RAJALAKSHMY, SC, ESI CORPN.

RESPONDENTS: APPLICANT

SRI.K.SURENDRANATHAN NAIR,
EXECUTIVE DIRECTOR,
M/S.ALUMINIUM INDUSTRIES LTD.,
SWITCHGEAR DIVISION, MANNAR POST,
ALAPPUZHA DISTRICT.

BY ADV. SRI.A.M.SHAFFIQUE
SRI.A.M.SHAFFIQUE
SMT.PRIYA MAHESH
SMT.PRIYA MANJOORAN

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 16/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

M.F.A.No. 449 of 2003

Dated this the 16th August, 2007.

J U D G M E N T

The Regional Director of Employees State Insurance Corporation is the appellant. This appeal is filed against an order passed by the Employees Insurance Court, Alappuzha, allowing the petition filed by the respondent. The respondent is M/s.Aluminium Industries Ltd., Switchgear Division, Mannar Post, Alappuzha District. The ESI Corporation claimed interest for delayed payment of contribution from 1/1997 to 9/1997. The delay varies from 64 to 382 days. The total amount claimed was Rs.77,469/=. The Insurance Court took a view that the respondent's establishment was functioning as a relief undertaking as ordered by the BIFR, and though there was delay, the entire contribution was paid, and hence, the delay was not wilful and was only on account of the reasons beyond their control.

2. The learned counsel relying on a decision of the Division Bench of this Court in **Cannanore Drug Lines v. E.S.I. Corporation** (2007 (1) KLT 880), argued that the provisions contained in Section 39(5) of the Employees State Insurance Act is mandatory and no discretion is either given to the Director or the

Insurance Court. It is also argued that in **Deputy Commissioner v. Corromandal Pharmaceuticals and Others** (AIR 1997 SC 2077), Apex Court held that bar under Section 22 applies only to such of those dues reckoned or included in sanctioned scheme for rehabilitation and recovery of contribution is not barred.

3. The learned counsel appearing for the respondent submitted that the respondent was declared as a sick unit. Therefore, it is not liable to pay interest on the delayed payment. It is also argued that the rate of interest stated in Act and Regulations are only a guideline and in appropriate cases, the Insurance Court has a discretion to award interest at a reduced rate. I am of the view that all those are matters to be considered by the Insurance Court. The matter requires reconsideration.

In the result, the appeal is allowed. The impugned order is set aside. I.C.No. 29/2000 is remanded to the Insurance Court for fresh disposal, in accordance with law, after giving both sides, reasonable opportunity to adduce further evidence.

K.PADMANABHAN NAIR,
JUDGE

nj.

K.PADMANABHAN NAIR, J.

M.F.A.No. 449 of 2003

J U D G M E N T

Dated: 16th August, 2007.